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Letter dated 16 November 2012 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Residual Mechanism for Criminal Tribunals, pursuant to paragraph 16 of Security Council resolution 1966 (2010).

I would be grateful if you could transmit these assessments to the members of the Security Council.

(*Signed*) Theodor **Meron**
President

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Annex I

Progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron (for the period from 1 July to 14 November 2012)

1. The present report is the first submitted pursuant to Security Council resolution 1966 (2010), by which the Council established the International Residual Mechanism for Criminal Tribunals and, in paragraph 16 of the resolution, requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Security Council on the progress of the work of the Mechanism.

I. Introduction

2. On 22 December 2010, the Security Council adopted resolution 1966 (2010), which established the Mechanism to carry out a number of essential functions of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, including the trial of fugitives who are among the most senior leaders suspected of being most responsible for crimes, after the closure of the Tribunals. The Council emphasized that the Mechanism should be a small, temporary and efficient structure. In accordance with its statute (see S/RES/1966 (2010), annex 1), the Mechanism has a single set of principals — a President, Prosecutor and Registrar — who have responsibility over two branches, one located in Arusha, United Republic of Tanzania, and the other in The Hague, the Netherlands.

3. As mandated, the Mechanism commenced operations at its Arusha branch on 1 July 2012. This branch covers functions inherited from the International Criminal Tribunal for Rwanda. (The Hague branch will assume functions derived from the International Tribunal for the Former Yugoslavia on 1 July 2013.)

4. The Arusha branch of the Mechanism is fully functional. It has begun issuing orders and decisions in areas under its competence, including its first Appeals Chamber decision. It has been actively providing witness support and protection functions for those witnesses who have testified in completed cases before the International Criminal Tribunal for Rwanda. The Arusha branch of the Mechanism is also engaged in the monitoring of cases referred by the International Criminal Tribunal for Rwanda to national jurisdictions and has assumed responsibility over issues related to the enforcement of sentences handed down by the Tribunal. It has sought, and will continue to seek, the cooperation of States on a variety of matters, including the critically important issue of the arrest and surrender of the remaining fugitives still wanted for trial by the Tribunal. In addition, it is providing assistance to States in their domestic investigations and prosecutions of individuals charged in relation to the genocide in Rwanda.

II. Establishment of the International Residual Mechanism for Criminal Tribunals

5. Planning and preparations for the establishment of the Mechanism began significantly prior to the commencement date of the operations of the Arusha branch on 1 July 2012 and involved close and extensive collaboration among officials of

the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism. Preparations became particularly intense after January 2012, as the newly appointed principals of the Mechanism worked closely to ensure that it would be capable of carrying out its functions without any gap in the provision of critical services. The principals also focused on raising awareness of the transition of functions among relevant parties, including witnesses, convicted persons and States Members of the United Nations. Throughout this process, the principals strove to ensure that the Mechanism could maintain and build upon the achievements of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

A. Organization and principals of the Mechanism

6. Article 4 of the statute of the Mechanism provides that it shall consist of three organs: (a) the Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism; (b) the Prosecutor, common to both branches of the Mechanism; and (c) the Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor. Each organ is headed by a full-time or permanent principal, common to both branches.

7. The first President of the Mechanism is Judge Theodor Meron, who is also the President of the International Tribunal for the Former Yugoslavia. President Meron was appointed by the Secretary-General on 29 February 2012.

8. President Meron was selected from among a roster of 25 independent judges, who were elected by the General Assembly on 20 December 2011 from a longer list submitted by the Security Council and following nominations from States Members of the United Nations. In selecting the judges, particular account was taken of candidates' experience as judges of the International Criminal Tribunal for Rwanda or the International Tribunal for the Former Yugoslavia in order to promote efficiency. As of 18 May 2012, all 25 judges on the roster of the Mechanism had been sworn in, and they are capable of assuming their duties when called upon to do so.

9. Pursuant to article 8 of the statute of the Mechanism, the judges will travel to Arusha or to The Hague only when necessary, as requested by the President. Insofar as possible, and as decided by the President, the judges will carry out their functions off site. The judges are not remunerated for being on the roster, but receive compensation only for the days on which they are called to exercise their functions.

10. The roster of judges comprises the following: Judges Carmel A. Agius (Malta); Aydin Sefa Akay (Turkey); Jean-Claude Antonetti (France); Florence Arrey (Cameroon); Solomy Balungi Bossa (Uganda); Ivo Nelson de Caires Batista Rosa (Portugal); José Ricardo de Prada Solaesa (Spain); Ben Emmerson (United Kingdom of Great Britain and Northern Ireland); Christoph Flügge (Germany); Burton Hall (Bahamas); Vagn Prüsse Joensen (Denmark); Gberdao Gustave Kam (Burkina Faso); Liu Daqun (China); Susana Gatti Santana (Uruguay); Joseph E. Chiondo Masanche (United Republic of Tanzania); Theodor Meron (United States of America); Bakone Justice Moloto (South Africa); Lee G. Muthoga (Kenya); Aminatta Lois Runeni N'gum (Gambia); Prisca Matimba Nyambe (Zambia); Alphons Orie (Netherlands); Seon Ki Park (Republic of Korea); Mparany Mamy

Richard Rajohnson (Madagascar); Patrick Lipton Robinson (Jamaica); and William Hussein Sekule (United Republic of Tanzania).

11. On 29 February 2012, the Security Council appointed Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda, to serve as the first Prosecutor of the Mechanism. Pursuant to article 14 of the Statute of the Mechanism, the Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute, essentially, those persons indicted by the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia as well as individuals who have knowingly and wilfully interfered in the administration of justice or have given false testimony before the Mechanism or the Tribunals.

12. On 19 January 2012, the Secretary-General appointed Mr. John Hocking, Registrar of the International Tribunal for the Former Yugoslavia, to serve as the first Registrar of the Mechanism. Pursuant to article 15 of the statute of the Mechanism, the Registrar is responsible for the administration and servicing of the branches of the Mechanism.

13. In an arrangement that promotes efficiency, and consistent with article 7 of the transitional arrangements approved by the Security Council (see S/RES/1966 (2010), annex 2), President Meron, Prosecutor Jallow and Registrar Hocking are all currently serving in two positions. President Meron is concurrently President of the International Tribunal for the Former Yugoslavia, Prosecutor Jallow is the serving Prosecutor of the International Criminal Tribunal for Rwanda, and Registrar Hocking is Registrar of the International Tribunal for the Former Yugoslavia. Such double-hatting is cost-effective, since each principal only receives one salary.

B. Commencement of the operations of the Arusha branch

14. On 1 July 2012, the Mechanism commenced work at its Arusha branch and assumed certain residual functions from the International Criminal Tribunal for Rwanda. Pursuant to the statute and the transitional arrangements of the Mechanism, those residual functions include: authority to try fugitives wanted for trial by the Tribunal; the authority to hear appeals against decisions handed down by the Tribunal where the notice of appeal was filed after 1 July 2012; authority to conduct reviews of judgements handed down by the Tribunal or to try post-commencement contempt cases; responsibility for the protection of victims and witnesses in completed trials of the Tribunal; supervision of the enforcement of sentences handed down by the Tribunal; decisions on pardon or commutation of sentences; and responding to requests for assistance from national jurisdictions related to the investigation or prosecution of those responsible for serious violations of international humanitarian law in Rwanda. In addition, the Mechanism assumed responsibility for the management of the archives of both Tribunals, and the latter will retain responsibility for the preparation of their records for transfer to the former.

C. Administration and facilities

15. For the current biennium 2012-2013, during which the Mechanism will coexist and be co-located with both the International Tribunal for the Former Yugoslavia

and the International Criminal Tribunal for Rwanda, the three institutions are sharing resources and providing mutual support, in particular by double-hatting staff members and using common administrative support services. To ensure that the Mechanism remains a small and efficient institution, and given the staffing levels of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, the Mechanism does not currently have its own administration. All the administrative services required by the Mechanism, such as human resources, finance, budget, procurement, logistics, security and information technology services, are being provided by the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda, under the coordination of the Mechanism Registry. This arrangement will allow economies of scale through means that include reduced requirements for the funding of posts, lower general operating expenses, and reduced costs for infrastructure equipment and administrative services.

16. Pending the construction of new permanent premises for the Arusha branch, the Registrar, with the assistance of the General Services Section of the International Criminal Tribunal for Rwanda, finalized an office plan for the Mechanism within the premises of the Tribunal. The Registrar ensured that the office space was equipped and fully functional by 1 July 2012.

17. On 3 July 2012, the General Assembly adopted resolution 66/240 B on the report of the Secretary-General on the construction of a new facility for the Arusha branch of the Mechanism (A/66/754). As the project moves forward, the Mechanism is working closely with, and benefiting from, the technical expertise and lessons learned in other United Nations construction projects through the Office of Central Support Services of the Secretariat. Under the overall coordination of the Registrar, the Mechanism, the two Tribunals and the Office of Central Support Services have been consulting closely and have developed the basic programmatic requirements for the facility, including space and technical requirements. A conceptual design has also been prepared. The Office of Central Support Services is facilitating coordination with the relevant departments of the Secretariat, including the Department of Safety and Security, the Office of Legal Affairs and the Procurement Division.

18. Cooperation between the Mechanism and the Government of the United Republic of Tanzania has been excellent to date. The Government has offered to provide land and facilities, such as electricity, water and drainage system, at no cost to the Organization. The United Nations is gathering information to decide on the viability of the proposed site for the facility.

D. Adoption of rules and practice directions

19. The Mechanism has established a structure to govern its activities, mindful of the need to develop rules, procedures and policies that harmonize and build upon best practices of both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

20. In accordance with article 13 of the statute of the Mechanism, on 8 June 2012, the Judges of the Mechanism adopted the rules of procedure and evidence. The rules govern the Mechanism's trial and appellate proceedings as well as sentencing and early release practices. The rules harmonize and build upon the procedures already

in place at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. They were developed by the Tribunals in conjunction with the Office of Legal Affairs and incorporate comments from the Judges, Offices of the Prosecutors, Registries and Associations of Defence Counsel of both Tribunals, as well as from members of the Security Council.

21. In addition, the Mechanism has developed and issued key practice directions and policies.

22. On 26 June 2012, the Registrar, following consultation with the President, approved the "policy for the provision of support and protection services to victims and witnesses". On 5 July 2012, the Mechanism issued three practice directions: "Practice Direction related to appeals" (MICT/4); "Practice Direction on the procedure for designation of the State in which a convicted person is to serve his or her sentence of imprisonment" (MICT/2); and the "Practice Direction on the procedure for the determination of applications for pardon, commutation of sentence and early release of persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism" (MICT/3). On 13 July 2012, the Registrar, following consultation with the President, approved the "Standard for Preparation and Transfer of Records — Physicai Records". On 14 November 2012, the Registrar, following consultation with the President, issued the "Directive on Assignment of Defence Counsel" (MICT/5) and the "Code of Professional Conduct for Defence Counsel Appearing before the Mechanism" (MICT/6).

23. The Registrar of the Mechanism will shortly issue the "Practice Direction on filings made before the Mechanism for International Criminal Tribunals". A policy on remuneration of Defence Counsel is still under discussion. More policies related to archives are also planned.

E. Recruitment of staff

24. The prompt, fair and transparent recruitment of staff for the small Mechanism has been an administrative priority. Under the coordination of the Registrar of the Mechanism, recruitment has been conducted by cross-Tribunal panel members and members of central review bodies, with appropriate geographical representation and gender balance. The human resources of both Tribunals have shared the burden of this demanding exercise.

25. Of the 60 positions available from 1 July 2012 across both branches of the Mechanism, 83 per cent have either been filled or are now under recruitment. Staff who have been recruited or laterally transferred to the Mechanism include nationals of the following States: Belgium, Democratic Republic of the Congo, France, Italy, Kenya, Mali, the Netherlands, Rwanda, Senegal, Serbia, Switzerland, the United Republic of Tanzania, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe. Approximately three quarters of the staff were recruited from the Tribunals.

III. Judicial activities

26. In accordance with articles 1, 23 and 24 of the statute of the Mechanism and articles 1 to 4 of the transitional arrangements, on 1 July 2012, the Mechanism assumed responsibility for a number of judicial matters of the International Criminal Tribunal for Rwanda, including: the trial of fugitives; retrials of indictees ordered by the Appeals Chamber on or after 1 July 2012; the hearing of appeals against decisions of the Tribunal where the notice of appeal was filed after 1 July 2012; the review of judgements for which the application was filed after 1 July 2012; and the trial of contempt of court and false testimony cases for which the indictment was confirmed after 1 July 2012.

27. On 2 July 2012, the President of the Mechanism assigned Judge Vagn Joensen as duty judge at the Arusha branch. The decision maximized efficiency, since Judge Joensen was already resident in Arusha, serving in the capacity as President of the International Criminal Tribunal for Rwanda. The decision also made economic sense, since Judge Joensen is receiving compensation from the Tribunal, and thus does not require any remuneration for additional duties performed for the Mechanism. In his role as duty judge, Judge Joensen has dealt with numerous motions, including motions seeking variations of protective measures for use of materials in other proceedings.

28. On 5 October 2012, the Appeals Chamber of the Mechanism delivered its first decision in a challenge brought against a decision of the Trial Chamber of the International Criminal Tribunal for Rwanda transferring a case for trial in Rwanda pursuant to Rule 11*bis* of the Rules of Procedure and Evidence of the Tribunal. To ensure the most efficient use of resources, the President of the Mechanism presided over the Appeals Chamber. The Appeals Chamber upheld the Tribunal's decision to transfer the case of Phénéas Munyarugarama to Rwanda for trial proceedings, finding that counsel for Mr. Munyarugarama had failed to rebut the presumption that the Rwandan judiciary is impartial. In reaching its decision, the Appeals Chamber stated that the statute and rules of the Mechanism reflect normative continuity with those of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. According to the Appeals Chamber, "[t]hese parallels are not simply a matter of convenience or efficiency but serve to uphold principles of due process and fundamental fairness, which are the cornerstones of international justice".

29. The Appeals Chamber of the Mechanism has a number of confidential filings pending before it. The Mechanism will also have competence over any appeal from final judgement in the International Criminal Tribunal for Rwanda case of *Ngirabatware*, where judgement is due to be rendered at the end of 2012. Consistent with his goal of economizing resources, the President of the Mechanism plans to preside over that appeal and intends to appoint Mechanism judges already based in The Hague to that bench.

IV. Victims and witnesses

30. Pursuant to article 20 of the statute of the Mechanism and article 5 of the transitional arrangements, on 1 July 2012, the Mechanism became responsible for witness support and protection functions in relation to the nearly 3,000 protected

witnesses who have testified in completed cases tried by the International Criminal Tribunal for Rwanda. This transition occurred with no gap in protection for the witnesses. (The Tribunal will remain responsible for the protection of victims and witnesses in cases ongoing before it. Similarly, the Mechanism will assume responsibility for witness protection issues for completed cases before the International Tribunal for the Former Yugoslavia on 1 July 2013, but not for ongoing cases.)

31. The Witness Support and Protection Office has been fully operational since the establishment of the Arusha branch of the Mechanism. This has ensured a smooth transition in the provision of protection and support services to witnesses.

32. The Mechanism is now responsible for the management and safe keeping of confidential witness information, providing security for witnesses, undertaking threat assessments and coordinating responses to security requirements, consistent with judicial protection orders and in close collaboration with domestic authorities. The Mechanism is also providing continuing support services to witnesses, including the provision of medical and psychosocial services to witnesses residing in Rwanda, particularly for psychotrauma and HIV/AIDS patients, many of whom contracted the virus as a result of the genocide.

V. Fugitives and trial readiness

33. On 1 July 2012, in accordance with Security Council resolution 1966 (2010) and the statute of the Mechanism, the responsibility for tracking the remaining fugitives transferred to the Mechanism. The arrest and prosecution of the fugitives is a top priority for the Mechanism, and the President and Prosecutor, with the support of the Registrar, have agreed to work closely on the associated political issues.

34. To date, nine of the accused who were indicted by the International Criminal Tribunal for Rwanda for their participation in the genocide in Rwanda in 1994 remain at large. Currently, the Mechanism will retain jurisdiction over three of those indictees, namely, Augustin Bizimana; Félicien Kabuga; and Protais Mpiranya. (Consistent with article 6 of the statute of the Mechanism, the Prosecutor of the Tribunal requested referrals to Rwanda in the cases of six fugitives: Fulgence Kayishema; Charles Sikubwabo; Ladislas Ntaganzwa; Aloys Ndimbati; Charles Ryandikayo; and Phénéas Munyarugarama.)

35. The Mechanism must, consistent with its commitment to efficiency, be prepared to commence a trial when a fugitive is apprehended. Consequently, the Registrar is ensuring that the necessary facilities and services will be in place and is preparing a roster of qualified potential staff, pursuant to article 15 (4) of the statute of the Mechanism. The Prosecutor is preparing a similar roster of potential staff for his office in accordance with article 14 (5) of the statute.

VI. Cases referred to national jurisdictions

36. The Mechanism, pursuant to article 6 (5) of its statute, is responsible for monitoring cases referred under International Criminal Tribunal for Rwanda Rule 11*bis* to national courts, with the assistance of international and regional organizations and bodies.

37. The cases of *Bucyibaruta* and *Munyeshyaka* were referred to France in November 2007. They remain pending before the French judiciary.

38. The trial in the first case transferred by the Tribunal to Rwanda, *Uwinkindi*, is expected to commence in Kigali in the coming months. The pretrial proceedings have been monitored by trial monitors of the Tribunal, pending the conclusion of negotiations between the Registry of the Tribunal and the African Commission on Human and Peoples' Rights. Monitoring reports are filed in the official case record, and the public reports are available through the website of the Mechanism (http://unmict.org).

39. Pursuant to the statute of the Mechanism, if it is clear that the conditions for referral are no longer being met in a particular case, and, if it is in the interests of justice, a referral order may be revoked, and the case may be tried by the Mechanism.

VII. Enforcement of sentences

40. In accordance with article 25 of the statute of the Mechanism, on 1 July 2012 its President assumed jurisdiction over enforcement issues related to the Mechanism and the International Criminal Tribunal for Rwanda, including the authority to designate enforcement States, to supervise the enforcement of sentences and to decide on requests for pardon or commutation of sentence for convicted persons already serving their sentences.

41. The final persons convicted by the Tribunal are currently serving their sentences in either Mali (19 persons) or Benin (13 persons). The most recent transfer of eight persons from the United Nations Detention Facility in Arusha to the respective States designated for enforcement took place on 1 and 2 July 2012.[1] One final convicted person is currently held at the detention facility.

42. Consistent with a best practice of the Tribunal to conduct regular visits to the prisons in Mali and Benin, the Registrar conducted a mission to these countries in October 2012. His goals were: to assess enforcement of sentences practices on the ground, with special attention to the controls and procedures in place to ensure fiscal accountability; to raise awareness among authorities on the operations of the Mechanism within their territory; to discuss potential amendments to the enforcement of sentencing agreements to include the recommendations of the International Committee of the Red Cross and to meet with convicted persons and prison authorities on pending general and specific issues. Follow-up activities are being implemented by the Registrar, in consultation with the President.

43. The Mechanism has sought advice from the Department of Safety and Security and the Resident Coordinator in Mali on the security situation in Mali and continues to monitor closely the security situation of the Tribunal's convicts in that country.

[1] The transfer was conducted by the Tribunal and was originally planned to be undertaken before the commencement of the Mechanism. Owing to logistical reasons, the operation could only be completed immediately after 1 July 2012, following appropriate consultations and coordination between the Tribunal and the Mechanism.

VIII. Archives and records

44. In accordance with article 27 of its statute, the Mechanism has exclusive responsibility for the preservation and management of the archives of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, as well as for access issues. Both Tribunals are responsible for preparing their records for transfer to the Mechanism. Pursuant to article 27 (2) of the statute of the Mechanism, the archives of the International Criminal Tribunal for Rwanda are to be located in Arusha, and the archives of the International Tribunal for the Former Yugoslavia are to be located in The Hague.

45. The Tribunals' archives include materials concerning: investigations, indictments and court proceedings; work relating to the detention of accused persons, the protection of witnesses and enforcement of sentences; and documents from States, other law enforcement authorities, international and non-governmental organizations and the general public. The material consists of documents, maps, photographs, audiovisual recordings and objects. The Mechanism has been tasked to preserve those materials and to facilitate the widest possible access to them while ensuring the continued protection of confidential information, including information concerning protected witnesses.

46. As part of its preparation to assume the management of those materials, the Mechanism established the Mechanism Archives and Records Section. The Section has developed standards for the preparation and transfer of records of the Tribunals and is reviewing and streamlining the existing policies, procedures and systems for the management and operation of the centres where those records will be kept.

47. At The Hague branch, the Mechanism Archives and Records Section has already assumed responsibility for the central records centre of the International Tribunal for the Former Yugoslavia. (A limited number of staff of the Mechanism are located in The Hague for those purposes.)

48. In Arusha, physical custody of records of the International Criminal Tribunal for Rwanda remains with the Tribunal itself, pending completion of their preparation for transfer and the completion of the establishment of a small interim records centre within the premises shared by the Mechanism and the Tribunal. The Section has thus not yet assumed responsibility for the Tribunal's materials. (Once construction of the permanent premises building is complete, the archives of the Tribunal and of the Arusha branch of the Mechanism will be rehoused in a dedicated storage space at that location.)

49. Access and information security issues regarding the records of the Mechanism and the Tribunals are set out in the Secretary-General's bulletin on "International Criminal Tribunals: information sensitivity, classification, handling and access", which was promulgated on 20 July 2012 (ST/SGB/2012/3).

IX. Cooperation of States

50. Pursuant to article 28 of the statute of the Mechanism, States are required to cooperate with the Mechanism in relation to the investigation and prosecution of persons covered under the statute of the Mechanism, as well as with orders and requests for assistance in relation to Mechanism cases. The Mechanism, like the

International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, is dependent on the cooperation of States.

51. The arrest and surrender of remaining fugitives is a priority of the Mechanism. The Mechanism requires the full cooperation of States in relation to the ongoing fugitive tracking operations being conducted by the Prosecutor and continues the call of the International Criminal Tribunal for Rwanda on relevant States in this respect.

52. The Mechanism has been engaged with the Government of Rwanda on a number of issues, and the Prosecutor and Registrar have made technical visits to Kigali to facilitate cooperation. Rwandan authorities have extended an invitation to the President, and a first official visit is planned for December 2012.

53. Pursuant to the identification by the Security Council in its resolution 1966 (2010) of the seats of the branches of the Mechanism as The Hague and Arusha, the Office of Legal Affairs is negotiating host country agreements with the Governments of the United Republic of Tanzania and the Netherlands. The Mechanism looks forward to the conclusion of those agreements.

X. Assistance to national jurisdictions

54. Since 1 July 2012, the Mechanism has considered, in accordance with article 28 (3) of its statute and its rules, requests made by various national authorities for assistance in relation to national investigations, prosecutions and trials of individuals charged in relation to the genocide in Rwanda. Requests for provision of assistance to national courts include requests for evidence and/or variation or rescission of protective measures for witnesses, as well as requests to question detained persons. Starting on 1 July 2013, the Mechanism will similarly respond to requests for assistance directed to the International Tribunal for the Former Yugoslavia.

XI. Outreach and external relations

55. The principals of the Mechanism have provided briefings regarding the work of the Mechanism to Member States and have engaged in discussions with interested groups on the mandate and priorities of the Mechanism.

56. On 2 July 2012, the Mechanism launched its website. The continuously expanding website explains the mandate of and provides essential information about the Mechanism and features links to the public records databases of the Mechanism and the Tribunals. Information on the website is currently available in the official languages of the Mechanism, English and French. Bosnian-Croatian-Serbian and Kinyarwanda will be added shortly to increase transparency and to make the information more accessible to the communities in the former Yugoslavia and Rwanda.

XII. Conclusion

57. Consistent with Security Council resolution 1966 (2010) and its mandate, the Mechanism became operational on 1 July 2012 with the commencement of operations in the Arusha branch. It was a challenging task. Careful preparation by officials of the Mechanism and the extensive cooperation and assistance received from the Tribunals and other organizations, including the Office of Legal Affairs, ensured a smooth opening and a successful transition of functions. Throughout the process, the Mechanism was mindful of the injunction of the Security Council that it be a small and efficient organization, and it is committed to remaining so.

Annex II

Progress report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Justice Hassan Bubacar Jallow (for the period from 1 July to 5 November 2012)

I. Introduction

1. On 22 December 2010, the Security Council adopted resolution 1966 (2010), by which it established the International Residual Mechanism for Criminal Tribunals. In so doing, the Security Council acknowledged the contributions made by the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to international criminal justice and accountability for serious international crimes and the necessity that all persons indicted by those Tribunals are brought to justice. Thus, the Mechanism is tasked with continuing the jurisdiction, rights and obligations, and essential functions of the Tribunals following the completion of their respective mandates. In this regard, the Council emphasized that the Mechanism should be a small, temporary and efficient structure. The Mechanism comprises two branches. One branch deals with functions inherited from the International Criminal Tribunal for Rwanda and commenced operations in Arusha, the United Republic of Tanzania, on 1 July 2012. The other branch will be located in The Hague and will take on functions derived from the International Tribunal for the Former Yugoslavia on 1 July 2013.

2. On 29 February 2012, by its resolution 2038 (2012), the Security Council appointed the Prosecutor of the International Criminal Tribunal for Rwanda, Justice Hassan Bubacar Jallow, as Prosecutor of the Mechanism, with effect from 1 March 2012, following its earlier decision that the Mechanism's Prosecutor might also hold the office of Prosecutor of the International Criminal Tribunal for Rwanda. This greatly facilitated the preparation and coordination of key activities towards the establishment and commencement of the Office of the Prosecutor of the Mechanism.

3. In this regard, much of the preparatory work, including the recruitment of core staff, acquisition of facilities, negotiations with the Tribunals and host countries, as well as other Member States in respect of witnesses, detainees and cooperation agreements already executed, was started prior to 1 July 2012.

4. Since July 2012, the Office of the Prosecutor of the Mechanism has begun tracking operations, and arrangements are in place for a smooth transition of the remaining functions of the Office with support from the International Criminal Tribunal for Rwanda as necessary.

II. Staffing

5. Coordination and close cooperation with the Tribunals continue to ensure that the Mechanism functions during its early months. Upon formal appointment, the Prosecutor of the Mechanism, as an interim measure, designated 52 professional staff of the Office of the Prosecutor of the Tribunal to double-hat for related activities of the Mechanism under article 14 (3) of its statute. Since 1 July 2012, 7 of the 14 key staff members of the Office of the Prosecutor of the Mechanism have been appointed by the Registrar. They include three investigators, one crime

analyst and two language assistants, all based in Kigali, and one Legal Officer based in Arusha. In addition, the Prosecutor has designated three other staff to formally double-hat for the Office of the Prosecutor of the Mechanism during their respective tenures at the Tribunal. These include a Special Assistant to the Prosecutor, an Investigator and a Document Control Assistant. With ongoing recruitment, the full complement of Professional staff of the Office is expected to be in place by mid-December 2012. The recruitment process is currently being managed for the Office of the Prosecutor of the Mechanism by staff from the Office of the Prosecutor of the Tribunal and the Human Resources Section of the International Tribunal for the Former Yugoslavia. Lateral transfers from the Office of the Prosecutor of the Tribunal to the Office of the Prosecutor of the Mechanism have been managed by the former and processed by the Tribunal's Human Resources and Planning Section.

6. In the meantime, designated staff of the Office of the Prosecutor of the Tribunal will continue to double-hat until the full complement of staff of the Mechanism is in place.

III. Ad hoc functions

A. Tracking and prosecution of remaining fugitives

7. On 1 August 2012, the Prosecutor of the Mechanism received from the Prosecutor of the International Criminal Tribunal for Rwanda the files on three fugitives, Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The files had earlier been subject to the International Criminal Tribunal for Rwanda Rule 71 *bis* evidence preservation proceedings and further updating to ensure that the cases were trial ready before the Mechanism in the event of an arrest of any of the three fugitives. In the meantime, the Office of the Prosecutor of the Mechanism commenced investigation and tracking operations, which are based in Kigali. Those activities will focus on locating the three fugitives, support the tracking of the six fugitives referred to Rwanda for trial (under article 28) and carry out other related investigation work.

8. Efforts at tracking the remaining fugitives continue, with a focus on the Great Lakes and the southern African region.

9. The work of the joint International Criminal Tribunal for Rwanda-Kenya Police Task Force, reactivated since November 2010, in respect of the tracking of the key fugitive, Félicien Kabuga, remains slow. The main issues still revolve around relevant and credible information of Félicien Kabuga's whereabouts within the country or adequate proof of his alleged departure from Kenya and the investigation and sequestration of his assets in the country. Recent media reports from Kenya continue to suggest that the fugitive is present in the country, and due diligence from Kenya in the discharge of its international obligations pursuant to Security Council resolution 1966 (2010) would facilitate the location, arrest, transfer and trial of this high-level fugitive.

10. With regard to the fugitive Protais Mpiranya, the Prosecutor undertook a mission to Zimbabwe in September 2012 and held high-level discussions with government officials who all assured him of the cooperation of the Government of Zimbabwe, and the joint task force has since resumed its work.

B. Appeal proceedings

11. Owing to staffing constraints within the Mechanism, staff designated from the International Criminal Tribunal for Rwanda Appeals and Legal Advisory Division successfully defended the first appeal before the Mechanism Appeals Chamber, brought in respect of the decision by the Tribunal to transfer the case of Phineas Munyarugarama to Rwanda for trial.

12. Staff of the Appeals and Legal Advisory Division also are preparing for the anticipated Trial Chamber judgement in the case of Augustin Ngirabatware, which is due to be delivered in December 2012. This preparatory work will allow a smooth transition of the anticipated appeals to the staff of the Mechanism.

IV. Continuing functions

A. Assistance to national jurisdictions

13. While the responsibility for the servicing of foreign requests for assistance formally moved to the Mechanism from July 2012, staff of the Office of the Prosecutor of the Tribunal continued to discharge this responsibility on behalf of the Mechanism pending the recruitment by the Office of the Prosecutor of the Mechanism of its own staff by December 2012. The Office of the Prosecutor of the Mechanism responded to 23 requests from 11 different countries since 1 July 2012, in addition to hosting three national delegations in support of ongoing investigations or prosecutions.

B. Preservation and management of archives

14. On 2 July 2012, the Mechanism Prosecutor handed over to the Mechanism Registrar the archives of 27 completed prosecution files. The full archives of the Office of the Prosecutor of the Tribunal are expected to be transferred to the Office of the Prosecutor of the Mechanism upon completion of all appeals and related litigation before the Tribunal. Active records will in due course be transferred to the Mechanism Prosecutor, and materials of the Tribunal no longer in active use will be transferred to the Mechanism archives on an ongoing basis.

C. Monitoring of cases transferred to national jurisdictions

15. The monitoring function for cases transferred by the International Criminal Tribunal for Rwanda to national jurisdictions is also a responsibility of the Mechanism from 1 July 2012. The monitors appointed by the Tribunal Prosecutor to oversee the Munyeshyaka and Bucyibaruta cases, transferred to France in 2009, and the Uwinkindi case, transferred to Rwanda in 2012, now report to the Mechanism Prosecutor.

16. If the Appeals Chamber affirms the referral order in the case of Bernard Munyagishari, the Prosecutor will appoint a monitor for that case as well. In addition, the Prosecutor will appoint monitors in the other cases that have been

transferred to Rwanda (Sikubwabo, Kayishema, Ntaganzwa, Ndimbati, Ryandikayo and Munyarugarama) as and when the fugitives are arrested.

D. Establishment of The Hague branch of the Mechanism

17. With the establishment of The Hague branch of the Mechanism set for 1 July 2013, the Prosecutor has begun arrangements, in consultation with the International Tribunal for the Former Yugoslavia Prosecutor and the Registrar, to prepare for recruitment of appropriate staff of the Office of the Prosecutor, as well as facilities and administrative arrangements, in order to ensure a smooth transition of relevant functions of the Office of the Prosecutor of the Tribunal to the Mechanism on that date.

18. The Prosecutor is also preparing a roster of potential staff for his Office in the event of an arrest in accordance with article 14 (5) of the statute of the Mechanism.

V. Conclusion

19. The initial reporting period has been one of much activity and progress towards the establishment of the Office of the Prosecutor of the Mechanism. The Mechanism started operating on 1 July 2012. Key staff is already in place, and recruitment is expected to be completed by mid-December 2012. In the meantime, the Prosecutor of the Mechanism has taken over responsibility for the tracking and prosecution of three fugitives and the monitoring of cases transferred to national jurisdictions. The transition of foreign assistance and archiving functions is proceeding smoothly with the assistance of the Office of the Prosecutor of the Tribunal. The Prosecutor is grateful for the support of the staff of the Office of the Prosecutor of the Tribunal, who will continue to provide appeals support as required while recruitment continues.